

**Introduced by Committee on Insurance (Senators Calderon (Chair),
Anderson, Corbett, Correa, Gaines, Lowenthal, Price, and
Wyland)**

February 18, 2011

An act to add Article 9 (commencing with Section 10509.910) to Chapter 5 of Part 2 of Division 2 of the Insurance Code, relating to annuity transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 715, as introduced, Committee on Insurance. Annuity transactions.

Existing law requires agents and insurers to fulfill certain requirements with regard to the replacement of existing life insurance policies and annuities.

This bill would require insurers and insurance producers, as defined, to comply with specified requirements regarding the purchase, exchange, or replacement of an annuity recommended to a consumer, including, but not limited to, having reasonable grounds for the insurance producer believing the annuity transaction would be suitable for the consumer, as provided. The bill would also prohibit an insurance producer from selling annuities unless he or she has received Insurance Commissioner-approved training, and would authorize the commissioner to require certain actions by, and impose sanctions and penalties on, insurers and their agents for a violation of the provisions of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 9 (commencing with Section 10509.910)
2 is added to Chapter 5 of Part 2 of Division 2 of the Insurance Code,
3 to read:

4
5 Article 9. Suitability Requirements for Annuity Transactions

6
7 10509.910. (a) The purpose of this article is to require insurers
8 to establish a system to supervise recommendations and to set forth
9 standards and procedures for recommendations to consumers that
10 result in transactions involving annuity products so that the
11 insurance needs and financial objectives of consumers at the time
12 of the transaction are appropriately addressed.

13 (b) Nothing in this article shall be construed to create or imply
14 a private cause of action for a violation of this article.

15 10509.911. Notwithstanding any other provision of law, this
16 article shall apply to any recommendation to purchase, exchange,
17 or replace an annuity made to a consumer by an insurance producer,
18 or an insurer where no insurance producer is involved, that results
19 in the purchase, exchange, or replacement recommended.

20 10509.912. Unless otherwise specifically included, this article
21 shall not apply to transactions involving any of the following:

22 (a) Direct response solicitations where there is no
23 recommendation based on information collected from the consumer
24 pursuant to this article.

25 (b) Contracts used to fund any of the following:

26 (1) An employee pension or welfare benefit plan that is covered
27 by the Employee Retirement and Income Security Act (ERISA)
28 (29 U.S.C. Sec. 1001 et seq.).

29 (2) A plan described by Section 401(a), 401(k), 403(b), 408(k),
30 or 408(p) of the Internal Revenue Code, if established or
31 maintained by an employer.

32 (3) A government or church plan defined in Section 414 of the
33 Internal Revenue Code, a government or church welfare benefit
34 plan, or a deferred compensation plan of a state or local government
35 or tax exempt organization under Section 457 of the Internal
36 Revenue Code.

37 (4) A nonqualified deferred compensation arrangement
38 established or maintained by an employer or plan sponsor.

1 (5) Settlements of or assumptions of liabilities associated with
2 personal injury litigation or any dispute or claim resolution process.

3 (6) Formal prepaid funeral contracts.

4 10509.913. For the purposes of this article, the following terms
5 have the following definitions:

6 (a) “Annuity” means an annuity that is an insurance product
7 under state law that is individually solicited, whether the product
8 is classified as an individual or group annuity.

9 (b) “Continuing education credits” or “CE credits” means
10 continuing education credit from a continuing education course
11 approved by the commissioner.

12 (c) “Continuing education provider” or “CE provider” means
13 an individual or entity that is approved by the commissioner to
14 offer continuing education courses.

15 (d) “FINRA” means the Financial Industry Regulatory Authority
16 or a succeeding agency.

17 (e) “Insurance producer” means a person required to be licensed
18 under the laws of this state to sell, solicit, or negotiate insurance,
19 including annuities.

20 (f) “Insurer” means a company required to be licensed under
21 the laws of this state to provide insurance products, including
22 annuities.

23 (g) “Recommendation” means advice provided by an insurance
24 producer, or an insurer where no insurance producer is involved,
25 to an individual consumer that results in a purchase, exchange, or
26 replacement of an annuity in accordance with that advice.

27 (h) “Replacement” has the same definition as in Section 10509.2.

28 (i) “Suitability information” means information that is
29 reasonably appropriate to determine the suitability of a
30 recommendation, including all of the following:

31 (1) Age.

32 (2) Annual income.

33 (3) Financial situation and needs, including the financial
34 resources used for the funding of the annuity.

35 (4) Financial experience.

36 (5) Financial objectives.

37 (6) Intended use of the annuity.

38 (7) Financial time horizon.

39 (8) Existing assets, including investment and life insurance
40 holdings.

- 1 (9) Liquidity needs.
- 2 (10) Liquid net worth.
- 3 (11) Risk tolerance.
- 4 (12) Tax status.

5 10509.914. (a) In recommending to a consumer the purchase
6 of an annuity or the exchange of an annuity that results in another
7 insurance transaction or series of insurance transactions, the
8 insurance producer, or the insurer where no insurance producer is
9 involved, shall have reasonable grounds for believing that the
10 recommendation is suitable for the consumer on the basis of the
11 facts disclosed by the consumer as to his or her investments and
12 other insurance products and as to his or her financial situation
13 and needs, including the consumer's suitability information, and
14 that there is a reasonable basis to believe all of the following:

15 (1) The consumer has been reasonably informed of various
16 features of the annuity, such as the potential surrender period and
17 surrender charge, potential tax penalty if the consumer sells,
18 exchanges, surrenders, or annuitizes the annuity, mortality and
19 expense fees, investment advisory fees, potential charges for and
20 features of riders, limitations on interest returns, insurance and
21 investment components, and market risk.

22 (2) The consumer would benefit from certain features of the
23 annuity, such as tax-deferred growth, annuitization, or death or
24 living benefit.

25 (3) The particular annuity as a whole, the underlying
26 subaccounts to which funds are allocated at the time of purchase
27 or exchange of the annuity, and riders and similar product
28 enhancements, if any, are suitable, and in the case of an exchange
29 or replacement, the transaction as a whole is suitable, for the
30 particular consumer, based on his or her suitability information.

31 (4) In the case of an exchange or replacement of an annuity, the
32 exchange or replacement is suitable, including taking into
33 consideration whether any of the following are applicable:

34 (A) The consumer will incur a surrender charge, be subject to
35 the commencement of a new surrender period, lose existing
36 benefits, such as death, living, or other contractual benefits, or be
37 subject to increased fees, investment advisory fees, or charges for
38 riders and similar product enhancements.

39 (B) The consumer would benefit from product enhancements
40 and improvements.

1 (C) The consumer has had another annuity exchange or
2 replacement and, in particular, an exchange or replacement within
3 the preceding 36 months.

4 (b) Prior to the execution of a purchase, exchange, or
5 replacement of an annuity resulting from a recommendation, an
6 insurance producer, or an insurer where no insurance producer is
7 involved, shall make reasonable efforts to obtain the consumer's
8 suitability information.

9 (c) Except as permitted pursuant to subdivision (d), an insurer
10 shall not issue an annuity recommended to a consumer unless there
11 is a reasonable basis to believe the annuity is suitable based on the
12 consumer's suitability information.

13 (d) (1) Except as provided pursuant of paragraph (2), neither
14 an insurance producer, nor an insurer, shall have any obligation
15 to a consumer pursuant to subdivision (a) or (c) related to any
16 annuity transaction if any of the following occur:

17 (A) No recommendation is made.

18 (B) A recommendation was made and was later found to have
19 been prepared based on inaccurate material information provided
20 by the consumer.

21 (C) A consumer refuses to provide relevant suitability
22 information and the annuity transaction is not recommended.

23 (D) A consumer decides to enter into an annuity transaction that
24 is not based on a recommendation of the insurer or the insurance
25 producer.

26 (2) An insurer's issuance of an annuity subject to paragraph (1)
27 shall be reasonable under all the circumstances actually known to
28 the insurer at the time the annuity is issued.

29 (e) An insurance producer or, where no insurance producer is
30 involved, the responsible insurer representative, shall at the time
31 of sale do all of the following:

32 (1) Make a record of any recommendation subject to subdivision
33 (a) of this section.

34 (2) Obtain a customer signed statement documenting a
35 customer's refusal to provide suitability information, if any.

36 (3) Obtain a customer signed statement acknowledging that an
37 annuity transaction is not recommended if a customer decides to
38 enter into an annuity transaction that is not based on the insurance
39 producer's or insurer's recommendation.

1 (f) (1) An insurer shall establish a supervision system that is
2 reasonably designed to achieve the insurer's and its insurance
3 producers' compliance with this article, including, but not limited
4 to, all of the following:

5 (A) The insurer shall maintain reasonable procedures to inform
6 its insurance producers of the requirements of this article and shall
7 incorporate the requirements of this article into relevant insurance
8 producer training manuals.

9 (B) The insurer shall establish standards for insurance producer
10 product training and shall maintain reasonable procedures to require
11 its insurance producers to comply with the requirements of Section
12 10509.915.

13 (C) The insurer shall provide product-specific training and
14 training materials that explain all material features of its annuity
15 products to its insurance producers.

16 (D) The insurer shall maintain procedures for review of each
17 recommendation, prior to issuance of an annuity, that are designed
18 to ensure that there is a reasonable basis to determine that a
19 recommendation is suitable. The review procedures may apply a
20 screening system for the purpose of identifying selected
21 transactions for additional review, and may be accomplished
22 electronically or through other means, including, but not limited
23 to, physical review. An electronic or other system may be designed
24 to require additional review only of those transactions identified
25 for additional review by the selection criteria.

26 (E) The insurer shall maintain reasonable procedures to detect
27 recommendations that are not suitable. This may include, but is
28 not limited to, confirmation of consumer suitability information,
29 systematic customer surveys, interviews, confirmation letters, and
30 programs of internal monitoring. Nothing in this subparagraph
31 prevents an insurer from complying with this subparagraph by
32 applying sampling procedures, or by confirming suitability
33 information after issuance or delivery of the annuity.

34 (F) The insurer shall annually provide a report to senior
35 management, including to the senior manager responsible for audit
36 functions, which details a review, with appropriate testing,
37 reasonably designed to determine the effectiveness of the
38 supervision system, the exceptions found, and corrective action
39 taken or recommended, if any.

(2) (A) Nothing in this subdivision restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 10509.916 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (B).

(B) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subdivision. This includes, but is not limited to, both of the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed.

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(g) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from any of the following:

(1) Truthfully responding to an insurer's request for confirmation of suitability information.

(2) Filing a complaint.

(3) Cooperating with the investigation of a complaint.

(h) (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this article. This subdivision applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subdivision shall limit the commissioner's ability to enforce, including conducting investigations related to, the provisions of this article.

(2) For paragraph (1) to apply, an insurer shall do both of the following:

1 (A) Monitor the FINRA member broker-dealer using
2 information collected in the normal course of an insurer's business.

3 (B) Provide to the FINRA member broker-dealer information
4 and reports that are reasonably appropriate to assist the FINRA
5 member broker-dealer to maintain its supervision system.

6 10509.915. (a) An insurance producer shall not solicit the sale
7 of an annuity product unless the insurance producer has adequate
8 knowledge of the product to recommend the annuity, and the
9 insurance producer is in compliance with the insurer's standards
10 for product training. An insurance producer may rely on
11 insurer-provided product-specific training standards and materials
12 to comply with this subdivision.

13 (b) (1) (A) An insurance producer who engages in the sale of
14 annuity products shall complete a one-time four credit-hour training
15 course approved by the commissioner and provided by a
16 commissioner-approved education provider.

17 (B) Insurance producers who hold a life insurance line of
18 authority on the effective date of this article and who desire to sell
19 annuities shall complete the requirements of this subdivision within
20 six months after the effective date of this article. Individuals who
21 obtain a life insurance line of authority on or after the effective
22 date of this article may not engage in the sale of annuities until the
23 annuity training course required under this subdivision has been
24 completed.

25 (2) The minimum length of the training required under this
26 subdivision shall be sufficient to qualify for at least four CE
27 credit-hours, but may be longer.

28 (3) The training required under this subdivision shall include
29 information on all of the following topics:

30 (A) The types of annuities and various classifications of
31 annuities.

32 (B) Identification of the parties to an annuity.

33 (C) How fixed, variable, and indexed annuity contract provisions
34 affect consumers.

35 (D) The application of income taxation of qualified and
36 nonqualified annuities.

37 (E) The primary uses of annuities.

38 (F) Appropriate sales practices, replacement, and disclosure
39 requirements.

1 (4) Providers of courses intended to comply with this subdivision
2 shall cover all topics listed in the prescribed outline and shall not
3 present any marketing information or provide training on sales
4 techniques or provide specific information about a particular
5 insurer's products. Additional topics may be offered in conjunction
6 with and in addition to the required outline.

7 (5) A provider of an annuity training course intended to comply
8 with this subdivision shall register as a CE provider in this state
9 and comply with the rules and guidelines applicable to insurance
10 producer continuing education courses as set forth in ____.

11 (6) Annuity training courses may be conducted and completed
12 by classroom or self-study methods in accordance with ____.

13 (7) Providers of annuity training shall comply with the reporting
14 requirements and shall issue certificates of completion in
15 accordance with ____.

16 (8) The satisfaction of the training requirements of another state
17 that are substantially similar to the provisions of this subdivision
18 shall be deemed to satisfy the training requirements of this
19 subdivision in this state.

20 (9) An insurer shall verify that an insurance producer has
21 completed the annuity training course required under this
22 subdivision before allowing the insurance producer to sell an
23 annuity product for that insurer. An insurer may satisfy its
24 responsibility under this subdivision by obtaining certificates of
25 completion of the training course or obtaining reports provided by
26 commissioner-sponsored database systems or vendors or from a
27 reasonably reliable commercial database vendor that has a reporting
28 arrangement with approved insurance education providers.

29 10509.916. (a) An insurer is responsible for compliance with
30 this article. If a violation occurs, either because of the action or
31 inaction of the insurer or its insurance producer, the commissioner
32 may order any of the following:

33 (1) An insurer to take reasonably appropriate corrective action
34 for any consumer harmed by the insurer's, or by its insurance
35 producer's, violation of this article.

36 (2) A general insurance agency, independent agency, or the
37 insurance producer to take reasonably appropriate corrective action
38 for any consumer harmed by the insurance producer's violation
39 of this article.

40 (3) Penalties and sanctions pursuant to Section 10509.9.

1 (b) Any applicable penalty under Section 10509.9 for a violation
2 of this article may be reduced or eliminated if corrective action
3 for the consumer was taken promptly after a violation was
4 discovered or the violation was not part of a pattern or practice.

5 10509.917. (a) Insurers, general agents, independent insurance
6 agencies, and insurance producers shall maintain or be able to
7 make available to the commissioner records of the information
8 collected from the consumer and other information used in making
9 the recommendations that were the basis for insurance transactions
10 for five years after the insurance transaction is completed by the
11 insurer. An insurer is permitted, but shall not be required, to
12 maintain documentation on behalf of an insurance producer.

13 (b) Records required to be maintained by this article may be
14 maintained in paper, photographic, microprocessing, magnetic,
15 mechanical, or electronic media or by any process that accurately
16 reproduces the actual document.